REVISED COMMITTEE STATEMENT

LB 150

HEARING DATE: 2/2/99

COMMITTEE ON: Transportation

TITLE: (C. Peterson, Bromm, Matzke, Dw. Pedersen, Suttle, Thompson, Hudkins, Baker, Janssen, Jones, D. Pederson, Brown) Adopt the Telephone Consumer Slamming Prevention Act

ROLL CALL VOTE – FINAL COMMITTEE ACTION

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

8	Yes	Senators Hudkins, Bromm, Baker, Dw. Pedersen, Janssen, C. Peterson, Jones, Thompson
	No	
	Present, not voting	
	Absent	

PROPONENTS	REPRESENTING
Anne Boyle	Public Service Commission
Arlene Nelson	AARP
Claude Reyman	

OPPONENTS	REPRESENTING
Barry Counts	Sprint
Paul O'Hara	MCI World Com
Deonne Bruning	AT&T

NEUTRAL	REPRESENTING
Eric Carstensen	NE Telephone Assn.
Marilyn Bath	Consumer Div. – Atty. General's Office

SUMMARY OF PURPOSE AND/OR CHANGES:

The bill, as originally drafted, creates new protections and remedies for consumers for unauthorized changes to their interexchange carriers (slamming). The bill also gives the Public Service Commission the authority to assess penalties for violations and creates new obligations for the PSC to keep records of violations and present annual reports to the Legislature with respect to slamming. *Please note that the committee amendment replaces the original bill.*

The following is an outline of the superceded bill.

Sec. 1 *Names the "Telephone Consumer Slamming Prevention Act."*

Sec. 2 *Prohibits any carrier from changing a customer's interexchange carrier without first obtaining valid written authorization, which shall be in the following form:*
(1) it must clearly and simply describe the nature of the change;
(2) it must be signed and dated by the subscriber;
(3) it must be solicited in compliance with statutory guidelines;
(4) it' form must be prescribed or approved by the PSC;
(5) it must have a duplicate form that is to be kept by the subscriber.
Grounds for invalidity are also given:
(1) if it is attached to or a part of any other document;
(2) if it is included with any other billing for telephone services;
(3) if it contains any promotion offer or other inducement;
(4) if it represents that there is some further benefit for endorsement, other than a change in carrier selection.

Sec. 3 *If a telecommunications company violates this act, the company shall be liable to the subscriber for:*
(1) fees imposed for changing the interexchange carrier;
(2) charges that were assessed on services provided by the unauthorized company to the earlier of:
(a) the date that the subscriber's carrier is restored, or
(b) the expiration of a six-month period from the point at which service under an unauthorized change was begun.

Sec. 4 *New duties for the Public Service Commission are created, by which the PSC will establish and administer a slamming complaint system, including the following:*
(1) Provide a complain procedure for subscribers who have been slammed;
(2) Maintain records of recorded complaints;
(3) Review the recorded complaints to determine if a company has violated this act;
(4) Maintain records of slamming incidents, and which companies did the slamming;
(5) Compile a monthly report of incidents of slamming by company; and
(6) Present an annual report on slamming to the Legislature.

Sec. 5 *The PSC shall require each telecommunications carrier to put the following information into their customer's telephone bills:*
(1) The customer's rights to complain about slamming through the complaint system;
(2) A phone number to contact the complaint system;
(3) An address to which customers can mail their complaints, or visit in person.
The PSC shall determine what are the maximum levels of violations of this act that are acceptable for telecommunications companies, and review and revise this determination periodically.
The PSC shall keep track of companies' records with respect to slamming and present an annual report to the Legislature, that contains records of slamming and penalties assessed by the PSC against those violating the Act.

Sec. 6 *If a company has more violations per month than the PSC has established is acceptable, the companies shall be deemed to have willfully failed to comply with this act, and is subject to administrative penalties.*
The PSC is given the following directives in considering the amount of the fee:
(a) the number of violations in excess of applicable limits;
(b) the "ratio" of the number of violations which are in excess of applicable limits;
(c) other factors with respect to the individual telecommunications provider, including the extent, gravity and number of violations and the prior history of the company.
Each violation on each access line in this state may have assessed to it an administrative penalty not to exceed $1,000: these penalties shall be credited to the permanent school fund

Sec. 7 *Language authorizes rules and regulations to administer this act.*

Sec. 8 *The provisions of this act are in addition to and do not replace other provisions of law, if more restrictive than this act, but do replace provisions that are more permissive than this act.*

Sec. 9 *Severability Clause*

Sec. 10 *Emergency Clause*

Explanation of Committee Amendments

The Committee Amendment re-writes the Consumer Slamming Prevention Act. The bill still creates new protections and remedies for consumers for unauthorized changes to their interexchange carriers (slamming), but also includes prohibitions on unauthorized charges, (cramming or loading). The bill continues to provide the Public Service Commission with authority to assess penalties for violations and also creates some new obligations for the commission. The following provides a section by section summary of the revised bill.

Section 1. Names the "Telephone Consumer Slamming Prevention Act."

Section 2. Creates a statement of intent, that it is the policy of the state to prevent "slamming."

Section 3. Applies the telecommunications definitions found in § 86-802 to the provisions of this Act.

Section 4. Indicates that the Act will apply to all telecommunications companies providing basic local exchange services (local service), intra-LATA interexchange services (long-distance within an area code), inter-LATA-interexchange services or other telecommunications services.

Section 5. Requires a separate and distinct authorization for changes to each of the local and long distance service providers, and prohibits telecommunications companies from making changes to the local and long distance services of subscribers without obtaining one of the following forms of verification:

(1) Written authorization,

(2) Electronic call-back [toll-free] authorization from the telephone number which is the subject of the change order, or

(3) Oral authorization obtained by an independent third party

Section 6. Within thirty days after the change is made, each of the authorized provider of telecommunications services must send a written verification of the change, which shall be:

(1) a clear and simple description of the change;

(2) unattached to any other document;

(3) unaccompanied by any promotions, offers, or inducements; and

(4) mailed to the subscriber's billing address.

Section 7. Contains the following provisions:

(1) Any changes that are not made or verified consistent with rules and regulation shall be reversed within the period set by the Public Service Commission.

(2) If an unauthorized change is made, the company which initiated the unauthorized change (the company who caused the slamming) shall:

(a) pay any charges used by the subscriber from the change until the less of (i) the date that the service was changed back or (ii) 30 days;

(b) pay the charges associated with returning the subscriber to his or her original company;

(c) pay to the subscriber any amounts that the subscriber would have paid to the original company, had the change not occurred;

(d) return to the subscriber payments is excess of what would have been charged by the original company for the same services; and

(e) provide all billing records to the original company, for purposes of complying with this section.

(3) The original telecommunications company must restore the subscriber to all premium programs, if participation was terminated because of the change – and in addition must restore any premiums that would have been earned, if the subscriber has already paid charges to the unauthorized company.

(4) If the Public Service Commission finds that a company has violated this section, it may order the company to take corrective action or assess penalties in accordance with Section 8 of this Act.

Section 8. Contains the following provisions:

(1) The Public Service Commission is given the authority to impose administrative penalties for violations, not exceeding $2,000 per violation. However, each violation associated with a specific access line (i.e. telephone number) is a separate violation.

(2) The amount of the administrative penalty will be based on the following factors:

(a) The seriousness of the violation;

(b) The history of previous violations;

(c) Deterrence of future violations;

(d) Correction of the violation; and

(e) Other matters that justice may require.

(3) Appeals of the administrative penalty may be taken through the general appeals provisions of the Public Service Commission.

Section 9. The Public Service Commission may promulgate competitively neutral rules to implement this act, including rules that do the following:

(1) Protect against deceptive practices in obtaining authorizations;

(2) Are generally applicable to all telecommunications services provided in this state;

(3) Require the maintenance of records, provide procedures, and establish performance standards, to monitor how companies are changing service in regard to this Act;

(4) Establish and maintain a slamming complaint system for subscribers and to enforce this act;

(5) Ensure that the rules and regulations under this act are consistent with federal rules and regulations in this area.

Section 10. Contains the following provisions:

(1) Prohibits telecommunications companies from billing subscribers for additional services not required by the Public Service Commission and for which the subscriber did not explicitly contract. If the charge is assessed on a per-use basis and the subscriber notifies the company that he or she did not use the service, the charge shall be refunded or applied as a credit to the subscriber's next bill.

(2) If the subscriber informs the company that he or she did not use a per-use basis, the company must inform the subscriber of the ability to block the service, and block the service, if the subscriber requests a block. If the subscriber does not then request a block or later requests that the block be lifted, the subscriber will be responsible for charges caused by any further utilization of the service. Companies may not charge a reoccurring fee (e.g.. monthly fee) for blocking the service.

Section 11. Is a Severability Clause.

Section 12. Is an Emergency Clause.

EXPLANATION OF AMENDMENTS, IF ANY:

Senator